

PATENT  
Docket No.: 19603/2986 (CRF D-1940B)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Qiu et al.

Serial No. : 09/766,348

Cnfrm. No. : 7683

Filed : January 19, 2001

For : HYPERSENSITIVE RESPONSE INDUCED  
RESISTANCE IN PLANTS BY SEED  
TREATMENT

Examiner:  
A. Kubelik

Art Unit:  
1638

**PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW  
HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE  
OFFICE ACTION**

U.S. Patent and Trademark Office  
P.O. Box 2327  
Arlington, VA 22202  
Box:

Dear Sir:

On October 18, 2002, applicants' undersigned representative received a telephone call from Examiner Kubelik of the U.S. Patent and Trademark Office ("PTO"), who indicated that the above-identified application has been abandoned for failure to file a timely response to an outstanding Office Action, which according to PTO records was mailed on March 11, 2002. Applicants submit that the failure to respond to the Office Action, which resulted in the above-noted telephonic notice of abandonment, was due to nonreceipt of said Office Action. Therefore, pursuant to 37 C.F.R. § 1.181(a), applicants hereby petition the Commissioner for Patents to withdraw the holding of abandonment and remail the Office Action for the above-identified application.

Applicants submit that this Petition is being filed in compliance with 37 C.F.R. § 1.181(b). A search of the file and the docket record shows that the Office Action was never received by applicants' representative. A marked copy of the docket record of the application showing the last action entered (the receipt on September 4, 2002 of the Notice of

SN 09/766,348

- 2 -

Publication of Application) is attached hereto as Exhibit A. Had the Office Action been received, a separate "Action" entry would exist with an "Act Due Date" entered for responding to the same. No such entry exists. Applicants submit that this evidence provides sufficient basis for grant of this Petition. See 1156 OG 53 (October 25, 1993) (citing requirements for an evidentiary showing that is sufficient to withdraw holding of abandonment).

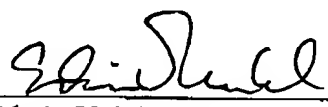
Because applicants' undersigned representative received the telephonic notice of abandonment on October 18, 2002, this petition is being timely filed in compliance with 37 C.F.R. § 1.181(f).

Although applicants believe that no fee is due upon consideration of this petition, the Commissioner is authorized to charge any necessary fees to our Deposit Account No. 14-1138.

In view of the foregoing in satisfaction of the requirements under 37 C.F.R. § 1.181, applicants respectfully request that the holding of abandonment be withdrawn and the Office Action be remailed to applicants' representative.

Respectfully submitted,

Date: October 29, 2002

  
\_\_\_\_\_  
Edwin V. Merkel  
Registration No. 40,087

Nixon Peabody LLP  
Clinton Square, P.O. Box 31051  
Rochester, New York 14603  
Telephone: (585) 263-1128  
Facsimile: (585) 263-1600

**Exhibit A**

Docket No	19603/2986	Patent No	
Country	United States	Serial #	09/766,348
Case Type	REGULAR CASE TYPE	Parent No	08/984,207
Relation Type	DIVISION	Parent Country	United States
Filing Type	NATIONAL CASE	Sub Stat	
Filing No		Status	FILED
Attorney #1	MICHAEL L. GOLDMAN	Total Claims	
Foreign Agent		Ind. Claims	
Client/Division	EDEN Bioscience Corporation	Expiration Dt	
Current Owner	CORNELL RESEARCH FOUNDATION	Assigned	ASSIGNMENT RECORDED
Attorney #2	EDWIN V. MERKEL	Oper Grp	
Next Tax Dt		Ag Ref No	
Tax Base Dt		CLT REF#	CRF D-1940B
Publication Dt	22AU2002	Safesite Box #	
Issue/Grant Dt		Verified	N
Filing Date	19JA2001	Customer	NXPF
Parent Grant Dt		Create Dt	16JA2001
Parent Filing Dt	03DE1997	Update Dt	04SE2002
Sub Stat Dt		Update Tm	1720
First Filing Dt	05DE1996	Update User	JB
Conv Type		Update Type	A
Publication #	US200200116733		

## \*\*Actions\*\*

Action	POSTCARD REMINDER	Comp Dt	31JA2001
Act Due Date	19FE2001	Resp Atty #1	
Taken Dt		Resp Atty #2	
DeadLn Dt			

Action	FILING RECEIPT REMINDER	Comp Dt	24AP2001
Act Due Date	19AP2001	Resp Atty #1	
Taken Dt		Resp Atty #2	
DeadLn Dt			

Action	PUBLISHED	Comp Dt	22AU2002
Act Due Date	19MY2001	Resp Atty #1	
Taken Dt		Resp Atty #2	
DeadLn Dt			

Action	STATUS INQUIRY LETTER TO PTO	Comp Dt	
Act Due Date	19AP2002	Resp Atty #1	
Taken Dt		Resp Atty #2	
DeadLn Dt			

Action	SMALL ENTITY DECLARATION FIL	Comp Dt	
Act Due Date		Resp Atty #1	
Taken Dt		Resp Atty #2	
DeadLn Dt			

Act Notes  
\*Small Entity status claimed.

Action	NOTICE FROM PTO	Comp Dt	04SE2002
Act Due Date		Resp Atty #1	
Taken Dt		Resp Atty #2	
DeadLn Dt			

Act Notes  
\*Notice of Publication of Application.

Action	DISKETTE TO PATENT OFFICE	Comp Dt	19JA2001
Act Due Date		Resp Atty #1	
Taken Dt		Resp Atty #2	
DeadLn Dt			

Action	DIVISIONAL APPLN. MUST BE FI	Comp Dt	19JA2001
Act Due Date		Resp Atty #1	
Taken Dt		Resp Atty #2	

Action	INFORMATION DISCLOSURE STATE	Comp Dt
Act Due Date		Resp Atty #1
Taken Dt		Resp Atty #2
DeadLn Dt		

19JA2001

Action	PRELIMINARY AMENDMENT FILED	Comp Dt
Act Due Date		Resp Atty #1
Taken Dt		Resp Atty #2
DeadLn Dt		

19JA2001

**\*\*Description\*\***

Description  
Not examined yet.

**\*\*Inventors\*\***

Inv Name Assigned	DEWEN QIU	Inventor	Dewen Qiu
Inv Name Assigned	ZHONG-MIN WEI	Inventor	Zhong-Min Wei
Inv Name Assigned	STEVEN V. BEER	Inventor	Steven V. Beer

**\*\*Other No's\*\***

Other No Cd	PTO Confirmation No.	Other No Dt
Other No	7683	

**\*\*Related Id\*\***

System	Patent	RL Type		
Docket No	19603/1201	Filing Type		
Ctry	USA	Filing No		
CS Type		Remarks	From 19603/1201	USA
System	Patent	RL Type	D	
Docket No	19603/2986	Filing Type		
Ctry	USA	Filing No		
CS Type		Remarks	From 19603/1201	USA

**\*\*Title\*\***

Title  
HYPERSENSITIVE RESPONSE INDUCED RESISTANCE IN PLANTS BY SEED  
TREATMENT

**Nixon Peabody LLP**  
 Attorneys at Law

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 P.O. Box 31051  
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OCT 31 2002

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1) Examiner A. Kubelik Art Unit 1638	USPTO	(703) 308-4242	
2)			
3)			
4)			
5)			

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A. Kubelik

**Art Unit:**

1638

# CERTIFICATE OF FACSIMILE

U.S. Patent and Trademark Office

**P.O. Box 2327**

Arlington, VA 22202

**Box:**

Dear Sir:

I hereby certify that this Petition Under 37 C.F.R. § 1.181 To Withdraw Holding of Abandonment Based on Failure to Receive Office Action is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Respectfully submitted,

Date: October 29, 2002

Shirley

Edwin V. Merkel

Registration No. 40,087

**Nixon Peabody LLP**  
**Clinton Square, P.O. Box 31051**  
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